

02 MAR 1999



**UNITED STATES DEPARTMENT OF COMMERCE
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In re Application of
KUBISIAK et al
Application No.: 08/765,584
PCT No.: PCT/EP95/01985
Int. Filing Date: 26 May 1995
Priority Date: 20 June 1994
Attorney's Docket No.: PORTO12
For: DETECTOR FOR A MEASURING DEICE

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: DECISION ON
:
: PETITION
:
: UNDER 37 CFR 1.181
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This decision is in response to applicant's letter filed 18 August 1998, which has been treated as a petition under 37 CFR 1.181 requesting withdrawal of the Notice of Abandonment.

On 17 December 1996, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a purported English translation of the international application; and a declaration as required by 35 U.S.C. 371(c)(4).

On 02 May 1997, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a English translation of the international application and the processing fee for filing the English translation later than 30 months from the priority date as required by 37 CFR 1.492(f) were required. The notification indicated the number of the claims in the international application and the purported translation were not the same. The notification set a one-month time limit in which to respond.

Applicant filed on 16 May 1997 a purported English translation of the claims present in the international application.

On 03 February 1998, the United States Designated/Elected Office mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the translation had been supplied and that a Notice of Defective translation had been attached. The Notice indicated that the claims in the international application and the purported translation are not

the same. The notification set a time limit of one month from the date of the mailing of the Notification or within the time remaining in the response set forth in the Notification of Missing Requirements (Form PCT/DO/EO/905), whichever is longer.

On 01 July 1998, the United States Designated/Elected Office mailed a Notification of Abandonment under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/909).

DISCUSSION

The petition is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in view of the revised policy published at 1156 OG 53, **Withdrawing the Holding of Abandonment When Office Actions Are Not Received**.

The showing required by the notice to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by practitioner and attesting to the fact that a search of the filed jacket and docket records indicate that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. Thus, what the Office now requires, as set forth in the OG notice, are the docket reports for when the response is due. Thus, the required evidence is the docket report for the time period of 03 March 1998 (when the translation was due).

Applicant has not submitted the required docket report.

The case remains abandoned as of midnight on 03 March 1998. Applicant may wish to consider the filing of a petition to revive the application under either 37 CFR 1.137(a) or (b).

THE PURPORTED TRANSLATION

A review of the purported English translation reveals it is not an accurate translation of the international application. Headings have been added throughout the purported translation. Further, in the purported translation on page 3, the section beginning with "(iii) Other Features of the Invention" has been added. Additionally on page 7, the section beginning with "6. CONCLUSIONS" has been added. Further the dependencies of claims 4-9 and 11-13 have been changed.

CONCLUSION

The petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required.

A proper response must include an accurate translation of the international application.

Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

A handwritten signature in cursive script, appearing to read "Leonard E. Smith".

Leonard E. Smith
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